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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/566,692

06/09/2006

Gustav Strobel

WBA06301

9688

50488

7590

12/07/2009

ALLEMAN HALL MCCOY RUSSELL & TUTTLE LLP  
806 SW BROADWAY  
SUITE 600  
PORTLAND, OR 97205-3335

EXAMINER

BARNETT, DEVIN K

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

12/07/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/566,692	<b>Applicant(s)</b> STROBEL, GUSTAV	
	<b>Examiner</b> DEVIN BARNETT	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-20,23-25,28 and 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 17-20,23-25,28 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/31/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

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### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating

obviousness or nonobviousness

Claims 17-19, 23-25, and 36 rejected under 35 U.S.C. 103(a) as being unpatentable over by Scholler 5,938,051.

Regarding claim 17, Scholler discloses a stacking column (Fig 1, R) for holding warehouse items on the support arms (Fig 1, #3) of ratchet levers (Fig 1, #2), which pivot around a rotational axis from a resting position into a working position (Abstract, lines 2-4), comprising a plurality of ratchet levers that are located above one another (as shown in Fig 1),

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the supporting element (Fig 1, #8) also rests on the rotational axis as a separate part.

Regarding the limitation “the ratchet lever comprises a sheet metal blank”, in accordance to MPEP 2113, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Please note that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product, does not depend on its method of production. *In re Thorpe, 227 USPQ 964, 966 (Federal Circuit 1985)*.

However, Scholler is not explicit that the ratchet lever is made of sheet metal. Examiner takes Official Notice that it is old and well-known to make machine parts of sheet metal, as sheet metal is easy to fabricate, inexpensive, and widely accepted as a strong and suitable material for levers. Further, It would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have made the part of sheet metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the

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intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim18, Scholler discloses a stacking column wherein the warehouse items are bodywork parts (Abstract, line 2).

Regarding claim19, Scholler discloses a stacking column (Fig 1, R) comprising at least one control arm (Fig 1, #4).

Regarding the limitation “that is also folded from the sheet metal blank”, in accordance to MPEP 2113, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Please note that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product, does not depend on its method of production. *In re Thorpe*, 227 USPQ 964, 966 (Federal Circuit 1985).

However, Scholler is not explicit that the control arm is made of sheet metal. Examiner takes Official Notice that it is old and well-known to make machine parts of sheet metal, as sheet metal is easy to fabricate, inexpensive, and widely accepted as a strong and suitable material for

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arms. Further, It would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have made the part of sheet metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 23, Scholler discloses a stacking column (Fig 1, R) wherein the ratchet lever (Fig 1, #2) has a guide tongue (Fig 5, #15) for sliding on the supporting element (Fig 1, #8).

Regarding claim 24, Scholler discloses a stacking column (Fig 1, R) wherein the guide tongue (Fig 5, #15) is at least partially upwardly directed.

Regarding claim 25, Scholler discloses a stacking column wherein the guide tongue is at least partially curved (Fig 6, #15).

Regarding claim 36, Scholler discloses a stacking column (Fig 1, R) for holding warehouse items on the support arms (Fig 1, #3) of ratchet levers (Fig 1, #2), which pivot around a rotational axis from a resting position into a working position (Abstract, lines 2-4), comprising a plurality of ratchet levers that are located adjacent to one another and co-operate with one another (as shown in Fig 1), wherein the ratchet lever comprises

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a supporting element (Fig 1, #8) that rests on the rotational axis as a separate part.

However, Scholler is not explicit that the ratchet lever and supporting element are made of sheet metal. Examiner takes Official Notice that it is old and well-known to make machine parts of sheet metal, as sheet metal is easy to fabricate, inexpensive, and widely accepted as a strong and suitable material for ratchet levers and supports. Further, It would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have made the part of sheet metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding the limitation “wherein the ratchet lever and supporting element comprise a sheet metal blank from which the supporting element is folded”, in accordance to MPEP 2113, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Please note that even though product-by-process claims are limited by and defined by the process, determination of

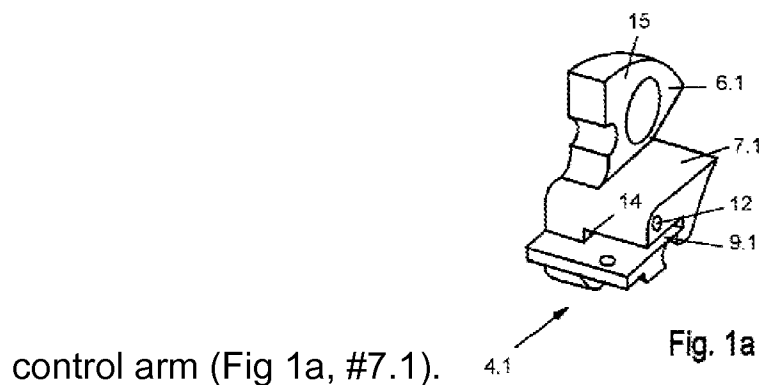
patentability is based on the product itself. The patentability of a product, does not depend on its method of production. *In re Thorpe*, 227 USPQ 964, 966 (Federal Circuit 1985).

Claims 20 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholler 5,938,051 in view of Strobel 6,234,743.

Regarding claim 20, Scholler discloses a stacking column comprising a control arm (Fig 1, #2.3) abutting the rotational axis of the next ratchet lever (Fig 1, #2.2 , #3.2, &14.2) in the working position.

Scholler does not explicitly teach a stacking column comprising an upwardly projecting lateral cheek that is folded up from the control arm.

However, Strobel discloses a stacking column (Fig 3, #1) comprising an upwardly projecting lateral cheek (Fig 1a, #6.1) that is folded up from a





Regarding claim 28, Scholler discloses a stacking column comprising a spacer ring (Fig 2, #5) with a selectable outer diameter that is placed in the area of the control arm (Fig 2, #4) of the rotational axis.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schoeller 5,301,824 discloses a stacking column. Schoeller 5,411,234 discloses a stacking column.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEVIN BARNETT whose telephone number is (571)270-1159. The examiner can normally be reached on M-Th 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571)272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DEVIN BARNETT/  
Examiner, Art Unit 3637

/KATHERINE W MITCHELL/  
Supervisory Patent Examiner,  
Art Unit 3634